

Application No. 09/911,047
Amendment Dated 10/18/2006
Reply to Office Action of September 29, 2006

REMARKS/ARGUMENTS

By this Amendment, claims 1, 3, and 34 are amended. Claims 1-4, 6-9, 12-37 are pending.

Cancellation of and/or amendment to the claims should in no way be construed as an acquiescence to any of the Examiner's rejections. The cancellation and/or amendments to the claims are being made solely to expedite prosecution of the instant application.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Claim Objections

The Examiner has objected to claim 1 for recitation of the term "fast". The claims have been corrected by amendment herein. The objection is moot, and reconsideration and withdrawal is respectfully requested.

Double Patenting

Claims 1-4, 6-9, 12-37 stand rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5, 8-12, 14-17, 25-26 of U.S. Patent No. 6,656,692 (Erikson et al.), and claims 1 and 28-46 of U.S. Patent No. 6,924,108 (Erikson et al.). Applicant respectfully traverses the foregoing rejection.

A rejection based on a nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application or proceeding in which the rejection is made. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); In re Knohl, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and In re Griswold, 365 F.2d 834, 150 USPQ 804 (CCPA 1966). MPEP804.02.

While Applicant traverses the rejection, solely in an effort to expedite prosecution of the

Application No. 09/911,047
Amendment Dated 10/18/2006
Reply to Office Action of September 29, 2006

instant application, Applicant has filed a terminal disclaimer over U.S. Patent No. 6,656,692 (Erikson et al.) and U.S. Patent No. 6,924,108 (Erikson et al.). The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Here, a single terminal disclaimer based on common ownership has been filed because the term disclaimed is based on all the conflicting, commonly owned double patenting references. MPEP 804.02 section IV. Evidence of the common ownership of the instant application and U.S. Patent No. 6,656,692 (Erikson et al.) and U.S. Patent No. 6,924,108 (Erikson et al.) can be found at Reel/Frame 016301/0471.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

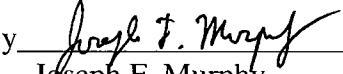
Application No. 09/911,047
Amendment Dated 10/18/2006
Reply to Office Action of September 29, 2006

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

October 18, 2006

By 
Joseph F. Murphy
Registration No. 58,313
Customer No. 03000
(215) 567-2010
Attorneys for Applicants

Please charge or credit our
Account No. 03-0075 as necessary
to effect entry and/or ensure
consideration of this submission.